The Summit Subang USJ Management Corp v Ho Phoy Kwang & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(IM)(NCvC)-839–05 OF 2022
HANIPAH FARIKULLAH, MARIANA YAHYA AND AZMI ARIFFIN JJCA
15 DECEMBER 2023

Civil Procedure — Originating summons ('OS') — Affidavit evidence — Whether dispute between parties could be determined if each party was allowed to cross-examine the deponents of the other party on their affidavits — Whether the issues that were determinable in the dispute did not require the OS to be converted into a writ action

The appellant was the management corporation of a business complex ('Summit') that housed 556 commercial parcels comprising retail outlets, hotels, offices and car park. The respondents, who were joint-owners of one of the parcels, filed an originating summons ('OS') to, inter alia, declare as unlawful and null and void, a move by the appellant to impose different rates for the calculation of maintenance fees payable by the parcels arguing that under the law a uniform rate per share unit should be applied to all the parcels. After the appellant filed an affidavit opposing the OS, the appellant applied (vide encl 6) to convert the OS into a writ action and regard all the affidavits filed as pleadings. The High Court dismissed encl 6 and allowed the parties the liberty to file and serve notices of intention to cross-examine the deponents on their affidavits. The appellant filed the instant appeal against the dismissal of encl 6 but by the time it came up for hearing, the appellant had already cross-examined the respondents on their affidavits. Consequently, the respondents argued that the appeal had become academic as there was no longer any necessity to convert the OS into a writ action. In any case, the respondents contended that the dispute between the parties only involved questions of law which could expeditiously be determined by way of affidavit evidence and submissions without the need for a trial.

Held, unanimously dismissing the appeal and ordering the court below to proceed with the hearing of the OS after giving each party the liberty to cross-examine the other party's deponents on their affidavits:

(1) Since the High Court had already commenced with the hearing of the OS, it was a futile exercise at this stage to convert the OS into a writ action. The issue of whether or not the appellant could impose varying monthly maintenance rates for the different parcels should be

determined after cross-examination of all the deponents on their affidavits. Both parties were equally entitled to carry out such cross-examination (see para 43).

[Bahasa Malaysia summary

Perayu merupakan perbadanan pengurusan sebuah bangunan perniagaan ('Summit') yang menempatkan 556 petak komersial yang terdiri dari kedai runcit, hotel, pejabat dan tempat letak kereta. Responden-responden, yang merupakan pemilik bersama salah satu petak itu, memfailkan saman pemula ('SP'), antara lain, untuk mengisytiharkannya sebagai salah, terbatal dan tidak sah, satu langkah oleh perayu untuk mengenakan kadar yang berbeza untuk pengiraan bayaran penyelenggaraan yang perlu dibayar oleh petak-petak dengan alasan bahawa di bawah undang-undang kadar seragam bagi setiap unit bahagian hendaklah dikenakan kepada semua petak. Selepas perayu memfailkan afidavit untuk membantah SP tersebut, perayu memohon (melalui lampiran 6) untuk menukar SP kepada tindakan writ dan menganggap semua afidavit yang difailkan sebagai pliding. Mahkamah Tinggi menolak lampiran 6 dan membenarkan pihak-pihak kebebasan untuk memfailkan dan menyerahkan notis niat untuk memeriksa balas deponen di dalam afidavit-afidavit mereka. Perayu memfailkan rayuan ini terhadap penolakan lampiran 6 tetapi pada waktu pendengaran, perayu telah pun memeriksa balas responden-responden dalam afidavit mereka. Oleh itu, responden berhujah bahawa rayuan itu telah menjadi akademik kerana tiada lagi keperluan untuk menukar SP menjadi tindakan writ. Walau bagaimanapun, responden-responden menghujahkan bahawa pertikaian antara pihak-pihak hanya melibatkan persoalan undang-undang yang boleh ditentukan dengan cepat melalui afidavit keterangan dan hujahan tanpa memerlukan perbicaraan.

Diputuskan, sebulat suara menolak rayuan itu dan memerintahkan mahkamah di bawah untuk meneruskan pendengaran SP selepas memberi kebebasan kepada pihak-pihak untuk memeriksa silang deponen pihak lain di dalam afidavit-afidavit mereka:

(1) Oleh kerana Mahkamah Tinggi telah pun memulakan pendengaran SP, adalah sia-sia pada peringkat ini untuk menukar SP menjadi tindakan writ. Isu sama ada perayu boleh mengenakan kadar bayaran penyelenggaraan bulanan yang berbeza untuk unit yang berbeza harus ditentukan selepas pemeriksaan balas terhadap semua deponen di dalam afidavit-afidavit mereka. Kedua-dua pihak berhak untuk melakukan pemeriksaan balas tersebut (lihat perenggan 43).]

Cases referred to

Cheah Shu Boon & Anor v Kuala Lumpur Golf & Country Club Berhad & Anor [2020] MLJU 1352, HC (refd)

Lai Soon Onn v Chew Fei Meng and other appeals [2019] 2 MLJ 96; [2018] 10 CLJ 48, CA (refd)
Muhamad Nazri bin Muhamad v JMB Menara Rajawali & Anor [2020] 3 MLJ 645; [2019] 10 CLJ 547, CA (refd)
NVJ Menon v The Great Eastern Life Assurance Co Ltd [2004] 3 MLJ 38, CA (refd)
Premier Model (M) Sdn Bhd v Phileo Promenade Sdn Bhd & Anor [2000] 1 MLJ 364; [1999] 1 LNS 160, HC (refd)
WTWT Sdn Bhd v Chew Meu Jong & Ors and another appeal [2018] MLJU 1360; [2018] 1 LNS 1458, HC (refd)

Legislation referred to

Rules of Court 2012 O 28 rr 4(3), (4), 8, O 34, O 38 r 2(2)
Strata Management Act 2013 ss 60(3)(b), 76
Strata Titles Act 1985

Appeal from: *Ho Phoy Kwang & Anor v The Summit Subang USJ Management Corporation & Ors* [2022] MLJU 1217 (High Court, Shah Alam)

Harpal Singh Grewal (with Harwinder Kaur and Dhanesh a/l Subramaniam Nair) (A J Ariffin Yeo & Harpal) for the appellant.
Raymond Mah Mun Kitt (with Carolyn Ng) (Mah Weng Kwai & Assoc) for the respondents.

Azmi Ariffin JCA:

INTRODUCTION

[1] By encl 6, the appellant vide a notice of application dated 12 July 2021, pursuant to O 28 rr 4(3) and (4), O 28 r 8, O 38 r 2(2) and O 34 of the Rules of Court 2012 and/or the inherent jurisdiction of this honourable court sought the followings orders that:

(1) the originating summons dated 30 April 2021 proceed to trial as a writ action;

(2) the originating summons and the affidavits stand as pleadings subject to the deponents being made available for cross-examination;

(3) the parties be permitted to call such other witnesses including the experts as may be necessary;

(4) encl 1 to be stayed pending the hearing and full and final disposal of this application;

(5) costs of and incidental to this application are to be borne by the plaintiffs on solicitor-client indemnity;

(6) pursuant to O 34 of the Rules of Court 2012, such further or other

directions and/or orders be made and/or given as this honourable court deems fit and just.

[2] Parties will be referred to as the appellant and the respondents respectively in this judgment.

BRIEF FACTS

[3] It is pertinent to recap the sequence of events and facts in order to appreciate the factual matrix of the present motion.

[4] The Summit Subang USJ ('The Summit') is an integrated mixed development project comprising of 556 parcels.

[5] The type of use of all the 556 parcels is 'perniagaan'.

[6] A total of 943,610 aggregate share units have been allocated for all 556 parcels in The Summits.

[7] The 556 parcels are currently being used and/or operated as retail malls (395,740 share units), hotels (152,955 share units), offices (58,240 share units) and car parks (336,675 share units) respectively.

[8] The appellant/first defendant is the Management Corporation of The Summit established under the Strata Titles Act 1985 and Strata Management Act 2013.

[9] The respondents/plaintiffs are co-proprietors of a shop lot Parcel No MI/4/523 in The Summit.

[10] On 30 April 2021, the respondents filed the originating summons (encl 1) supported by their affidavit-in-support (encl 2) against the appellant essentially for, inter alia, the following reliefs:

(i) A declaration that the special resolution passed at the Appellant's Extra Ordinary General Meeting ('EGM') designating 'Exclusive Common Property' and 'Shared Common Property' to support the determination and imposition of different maintenance charges rates on the designated parcel proprietors, is ultra vires the Strata Titles Act 1985 and Strata Management Act 2013 unlawful, null and void ab initio;

(ii) A declaration that all decisions made and/ or resolutions passed at the Appellant's Annual General Meeting ('AGM') and EGM respectively determining different rates of maintenance charges for different parcels in

The Summit are ultra vires the Strata Titles Act 1985 and Strata Management Act 2013 unlawful, null and void ab initio;

(iii) An order that a single maintenance charges rate per share unit per month be imposed in proportion to the allocated share units for each parcel in The Summit for each respective management period; and

(iv) An order that an administrator for the Appellant be appointed pursuant to section 76 of the Strata Management Act 2013 to carry out specific duties on behalf of the Appellant for a fixed period.

[11] On 12 July 2021, the appellant filed an affidavit-in-reply (encl 5) to oppose the said originating summons.

[12] On 12 July 2021 the appellant via encl 6 applied for the entirety of the originating summons (encl 1) to be converted into a writ action, for the affidavits to stand as pleadings subject to cross-examination, for the parties to call witnesses including expert witness (if necessary) and for ancillary orders.

[13] Subsequently, other additional parties intervened and were added as co-defendants, as stated below:

(a) by encl 24, Maybank Trustees Bhd as the trustee for AmFirst REIT and holder of 87.2% share units in the project, applied for intervention and was added as the second defendant; and

(b) by encl 35, 14 other parcel proprietors applied to be added as co-plaintiffs and, by reason of the inability of the original plaintiff and the new parties to agree to have a single law firm to act as all their solicitors, the 14 other parcel proprietors were added as defendants Nos 3–16.

[14] The second defendant filed an affidavit-in-support of the encl 6 application (conversion of the originating summons to writ) (encl 99).

[15] In respect of the conversion application in encl 6, the appellant and secon defendants supported it while the plaintiff opposed it. The defendants No 3–16 did not participate in the encl 6 application.

[16] On 26 April 2022, the learned High Court judge dismissed the appellant's application in encl 6 with costs in the cause and, pursuant to the discretionary powers of the court under O 28 r 4(3) of the Rules of Court 2012, the court granted liberty for both parties to file and serve notice to cross-examine deponents of affidavits subject to the following terms:

(a) notice of intention to cross-examine deponent shall be filed and served on or before 12 May 2022;

(b) the said notice shall state specifically the issue specifically the issues and paragraphs in the particulars affidavit(s) which the notice giver intends to cross-examine the deponent(s) and the reasons why the proposed cross-examination is necessary or expedient;

(c) the court will decide whether or not the cross-examination is allowed and will give case management directions on the scope, procedural steps and date for conducting such cross-examination.

[17] Dissatisfied with the said interlocutory decision, on 9 May 2022 the appellant filed an appeal to the Court of Appeal vide encl 123.

[18] On 18 May 2022, the appellant also filed an application to stay the originating summons pending the disposal of this appeal ('stay application').

[19] On 17 August 2022, the learned High Court judge dismissed the appellant's stay application with costs of RM5,000. The appellant did not appeal against the High Court's decision in dismissing the stay application.

[20] On 20 May 2022, the appellant filed the notice of intention to cross-examine the respondents' deponent (encl 126).

[21] On 5 July 2022, the High Court allowed the appellant's notice of intention to cross-examine the respondents' deponent.

[22] On 29 August 2022 and 5 September 2022, the appellant further filed 13 additional affidavits by various parties, including service providers, owners of individual components in The Summit and an expert witness, for purposes of the originating summons proper.

[23] On 19 May 2022, the cross-examination of the respondents' deponent was held and concluded.

[24] The High Court then directed parties to file their written submissions for the originating summons proper and fixed the decision of the originating summons proper on 23 August 2023.

[25] On 2 August 2023, 18 August 2023 and 22 August 2023, the parties filed their respective written submissions and written submissions-in-reply.

[26] On 23 August 2023 which was fixed for decision, the learned High Court judge adjourned its decision to 25 October 2023.

[27] So much for the factual background.

THE RELEVANT PROVISIONS OF LAW

[28] The law applicable on conversion of originating summons to writ are as follows:

(a) O 28 r 4 of the Rules of Court 2012 provides that:

> 4 Directions by Court
>
> (1) The Court hearing an originating summons may, if the liability of the defendant to the plaintiff in respect of any claim made by the plaintiff is established, make such order in favour of the plaintiff as the nature of the case may require, but where the Court makes an order under this paragraph against a defendant who does not appear at the hearing, the Court, if satisfied that it is just to do so, may rehear the originating summons.
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> (2) Unless on the first hearing of an originating summons the Court disposes of the originating summons altogether or orders the cause or matter begun by it to be transferred to a Subordinate Court or makes an order under rule 8, the Court shall give such directions as to the further conduct of the proceedings as it thinks best adapted to secure the just, expeditious and economical disposal thereof.
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> (3) Without prejudice to the generality of paragraph (2), the Court shall, at as early a stage of the proceedings on the originating summons as appears to it to be practicable, consider whether there is or may be a dispute as to fact and whether the just, expeditious and economical disposal of the proceedings can accordingly best be secured by hearing the originating summons on oral evidence or mainly an oral evidence and, if it thinks fit, may order that no further evidence shall be filed and that the oral evidence and partly on affidavit evidence, with or without cross-examination of any of the deponents, as it may direct.
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> (4) Without prejudice to the generality of paragraph (2), and subject to paragraph (3), the Court may give directions as to the filing of evidence and as to the attendance of deponents for cross- examination and any other directions.

(b) O 28 r 8 of the Rules of Court 2012 provides that:

> 8 Continuation of proceedings as if cause or matter begun by writ
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> (1) Where, in the case of a cause or matter begun by originating summons, it appears to the Court at any stage of the proceedings that the proceedings should for any reason be continued as if the cause or matter had been begun by writ, it may order the proceedings to continue as if the cause or matter had been so begun and may, in particular, order that pleadings shall be delivered or that any affidavits shall stand as pleadings, with or without liberty to any of the parties to add thereto or to apply for particulars thereof.
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> (2) Where the Court decides to make such an order referred to in rule (1), Order 34 shall apply with the necessary modifications

(c) s 60(3)(b) of the Strata Management Act 2013 provides that:

> 60 Maintenance account of the management corporation
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> (1) if the maintenance account in the name of the management corporation had not been earlier established under subsection 50(1), the management corporation shall open and maintain a maintenance account in the name of the management corporation, with a bank or financial institution.
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> (2) The maintenance account shall consist of all moneys specified in subsection 50(2), *and all moneys in the maintenance account shall be used for the purposes specified in* subsection 50(3).
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> (3) Subject to section 52, for the purpose of establishing and maintaining the maintenance account, the management corporation may at a general meeting —
>
> (a) ...
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> (b) raise the amounts so determined by imposing charges on the proprietors in proportion to the share units or provisional share units of their respective parcels or provisional blocks, and the management corporation may determine different rates of charges to be paid in respect of parcels which are used for significantly different purposes and in respect of the provisional blocks; and
>
> (c) ...

(d) O 92 r 4 of the Rules of Court 2012 provides that:

> 4 Inherent powers of the Court
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> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[29] The appellant's contention:

(a) there are serious triable issues on the different facilities utilised by each individual component in The Summit can only be resolved by oral evidence through the relevant witnesses and not through silent cold printed words in an affidavit;

(b) disputes of facts and law can only be resolved adequately through the adducing of evidence by parties through inter alia a proprietor of each specific component, service providers and the expert at a trial;

(c) there is a need to call the service providers of the respective facilities as witnesses on the different types of facilities supplied by them to the four individual components in The Summit;

(d) there is a need to call the expert who calculated the multiple rates approved by way of a special resolution at an EGM held on 4 August 2018 to explain the rationale, method and formula used by him to calculate the multiple rates assigned to each component of The Summit wherein 823,958 share units holders approved the special resolution as opposed to 1013 share units;

(e) the cross-examination of the respondents is necessary to assist in determining the validity of the issues or facts deposed by respondents in their affidavit;

(f) the respondents must provide cogent evidence to prove their baseless and unsubstantiated call in their affidavit for an Administrator to be appointed s 76 of the Strata Management Act 2013 for the appellant on how the management corporation has become dysfunctional, paralysed and incapacitated from performing its duties; and

(g) the originating summons is a fresh action and does not entail enforcement of any court order previously granted.

[30] The respondents' contention:

(a) this appeal has been rendered academic on the following grounds:

(i) after filing this appeal, the appellant proceeded to file the notice of intention to cross-examine pursuant to the High Court's order dated 26 April 2022; and

(ii) the appellant then pursued its notice of intention to cross-examine to its conclusion on 19 May 2022, when the cross-examination of the respondents' deponent was held and concluded. Hence, there is no longer any factual matter in controversy between the parties with regard to the conversion application.

(b) the court does not grant orders in futility;

(c) the appellant is estopped from pursuing this appeal;

(d) the respondents 'causes of action against the appellant in the originating summons concerns issues of law only which can be adequately determined and disposed of by way of affidavit evidence';

(e) there are no substantial conflicts or issues of facts/affidavit evidence in the originating summons which would require a trial;

(f) it is in the interest of justice, expeditious and economical to determine and dispose of the respondents' causes of action against the appellant by way of affidavit evidence in the originating summons; and

(g) the conversion applications, if granted, would inevitably entail unnecessarily protracted trial and waste of judicial time.

[31] Main issues for determination:

(a) whether there is serious triable issue or question in dispute of facts and law which ought to be tried or that there ought for some other reason to be a trial having regard to the nature of the reliefs claimed; and

(b) whether the controversy between the parties with regard to the issues of strata law can be conveniently and justly disposed of by affidavit evidence with or without cross-examination of deponents.

OUR DECISIONS

[32] In an application to convert the originating summons to a writ action, the principle is that he who asserts must prove and here, the appellant carries a legal burden to show circumstances and documentary evidence to justify the grant of a conversion and all the reasons must be deposed in the affidavit filed in support of the application.

[33] Before we turn to the findings of this honourable court, we find it necessary to begin by examining the various cases decided on the principles in conversion applications.

[34] In *Premier Model (M) Sdn Bhd v Phileo Promenade Sdn Bhd & Anor* [2000] 1 MLJ 364; [1999] 1 LNS 160 the High Court held that:

> The Court of Appeal in *Abdul Rahim bin Aki v Krubong Industrial Pork (Melaka) Sdn Bhd* [1955] 3 MLJ 417 unequivocally emphasised the discretionary power vested in this court whether to permit the conversion of proceedings commenced by originating summons into a writ action.
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> By encl 13 the first defendant's manager had affirmed an affidavit on behalf of both defendants in which he has admitted the fact that the water supply to the 16 units had been disrupted before the OS was filed. To my mind with this admission what remains to be decided is whether the court would accept or reject the explanation, if any, as contained in the affidavits. There is absolutely no need for oral evidence. It is my judgment that justice will be delayed by embarking upon an exercise in futility by letting this case go for trial. In fact this is precisely the type of case that warrants disposal by process of an OS.

[35] In *Cheah Shu Boon & Anor v Kuala Lumpur Golf & Country Club Berhad & Anor* [2020] MLJU 1352, the High Court had this to say:

> [19] It is also settled law that the conversion of an originating summons into a writ action will only be allowed if there is a serious dispute on issues as to fact.
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> [28] This court had perused all the cause papers especially the many affidavits (which in themselves cannot reflect that a trial is necessary) and the submissions by parties and hold that the issues involved are straightforward as there are no disputes to the facts (even though there are many affidavits), which do not necessitate a trial

to be conducted. If at all they look like dispute as to facts, it is indeed a case of whether the first defendants' justifications are acceptable and whether he has acted reasonably and in good faith. Hence, there is no necessity to call witnesses to testify, and it follows that there is no necessity to convert the originating summons to a writ action. If the parties want to extract more information, the parties can always apply under O 38 r 2 to cross-examine the deponents of the affidavits.

[36] The High Court in *WTWT Sdn Bhd v Chew Meu Jong & Ors and another appeal* [2018] MLJU 1360; [2018] 1 LNS 1458 held that the expeditious, just and economical way of disposing of a suit are the underlying principles in conversion applications:

[14] The question to be determined in the context of O 28 r 8 of the ROC application is whether the court is able to come to a determination of issues in dispute after looking at the averments made in the affidavits. Undoubtedly, there will always be disputes as to position in the exchange of affidavits by parties in dispute. Nevertheless, that does not automatically translate the need for a vivo voce evidence or a full blown trial. Expeditious, just and economical way of disposing the suits are the underlying principles in conversion applications.

[15] In *Syed Ibrahim bin Abdul Rahman v Liew Su Chin* [1984] 1 MLJ 160, where the conflicting interests of parties relating to land were determined by way of affidavits, the Federal Court adopted the approach as follows:

> Not all disputes of fact necessarily raise serious questions to be tried. It is of course quite right to say that it is undesirable to resolve disputes on affidavit evidence. Yet judges are expected in applying the test to be critical of the affidavit evidence which must on the face be at least plausible.

[37] The Court of Appeal in *NVJ Menon v The Great Eastern Life Assurance Co Ltd* [2004] 3 MLJ 38 through Gopal Sri Ram JCA (as he then was) delivering judgment of the court held that the construction of written law was a question to be determined by the court and not by witnesses through their oral evidence:

[18] When it comes to the meaning of words, it does not matter whether they appear in a contract or written law, the result is the same. The point is illustrated by the judgment of Thompson J, (as he then was) in *Reynolds v Public Prosecutor* [1956] MLJ 101, at p 103:

> It may be that the learned President accepted the evidence of the various functionaries of the Police Department who gave evidence as to what they considered to be the meaning of the relevant Orders as conclusive. If so, I think he was wrong. Whatever may be the attitude of Government functionaries who have to deal with these Financial General Orders there is nothing sacrosanct about them. They were not brought down from Pisgah by any bureaucratic Moses. They are written words and like any other written words what they mean is a matter of construction. It is no concern of mine as a Judge what civil servants do among themselves. As far as a Judge is concerned, they can say that black is white and for the purposes of their own activities black is white. But when the

criminal law and its sanctions are invoked and any question of construction is involved then that is a question for the Court to decide and not any Financial Assistant or even any Superintendent of Police who happens to be in charge of records.

[19] So too here. It matters not a jot to us what the plaintiff thought his entitlements under the contract with the defendant were. Neither does it matter to us what the defendant's witnesses thought of the way in which that contract ought to be interpreted. Their views are entirely irrelevant; as irrelevant as the views of the witnesses who gave their interpretation of the financial orders in *Reynolds*.

[38] Speaking through Zabariah Mohd Yusof JCA (as she then was), the Court of Appeal in *Lai Soon Onn v Chew Fei Meng and other appeals* [2019] 2 MLJ 96; [2018] 10 CLJ 48 held that the evidence of witnesses with regard to the construction of provisions of the law, even if the issue was a novel point of law, is of no effect and irrelevant:

[47] ... Firstly, although this may be a novel point of law, it does not justify it going to trial as the facts are not in dispute. The issues are in relation to the interpretation of ss 357 and 360 of the CMSA, therefore it concerns the construction of the relevant sections of the CMSA. Evidence of witnesses with regard to the construction of provisions of the CMSA is of no effect and irrelevant.

[39] The Court of Appeal in *Muhamad Nazri bin Muhamad v JMB Menara Rajawali & Anor* [2020] 3 MLJ 645; [2019] 10 CLJ 547 through Vernon Ong Lam Kiat JCA (as he then was) delivering the judgment of the court held that the issue of the determination of maintenance charges rate(s) is ultimately a matter of statutory interpretation:

[34] The question of whether the SMA 2013 limits the JMB's power to fix different rates is ultimately a matter of statutory interpretation. The rules governing statutory interpretation are quite settled. In construing a statute, effect must be given to the object and intent of the Legislature in enacting the statute. Accordingly, the duty of the court is limited to interpreting the words used by the Legislature and to give effect to the words used by it. The court will not read words into a statute unless clear reason for it is to be found in the statute itself (*Sri Bangunan Sdn Bhd v Majlis Perbandaran Pulau Pinang & Anor* [2007] 6 MLJ 581; [2007] 5 CLJ 673 (FC)). Therefore, in construing any statute, the court will firstly, look at the words in the legislation and apply the plain and ordinary meaning of the words in the statute. If there is any ambiguity to the words used, the court is duly bound to accept it even if it may lead to mischief. Where the language used is clear and unambiguous, it is not the function of the court to re-write the statute in a way which it considers reasonable. But if the words employed are not clear, then the court may adopt the purposive approach in construing the meaning of the words used (see *PP v Tan Tatt Eek & Other Appeals* [2005]1 CLJ 713). In *Andrew Lee Siew Ling v United Overseas Bank (Malaysia) Bhd* [2013] 1 MLJ 449; [2013] 1 CLJ 24 (FC), the Federal Court enunciated on the application of s 17A of the Interpretation Acts 1948 and 1967 which provides for a purposive approach in the interpretation of statutes.

[40] We had perused all the cause papers and had considered the submissions of parties. With the overriding principles in mind as stated in the above, we have reached our unanimous decision.

[41] Based on the facts and circumstances of this case, with regards to the disputes of what amounts to significantly different purposes within the meaning of s 60(3)(b) of the Strata Management Act 2013 can only be determined by the High Court by way of viva voce evidence and cross-examination of witnesses during trial and not through affidavit evidence.

[42] We have been informed by the parties that pending the disposal of encl 6, the High Court has given direction for the parties to file notice of intention to cross-examine witnesses. Pursuant to this direction, the appellant had filed several affidavits in respect of the direction given by the judge. Subsequently, on 20 May 2022, the appellant vide encl 126 filed a notice of intention to cross-examine the respondents' deponent. However, the learned High Court judge did not allow the appellant to cross-examine the respondents' deponents of the affidavit including the affidavit filed by the respondents.

[43] In our considered view, since the learned High Court judge has commenced hearing of the originating summons, it will be a futile exercise at this stage to convert the originating summons into a writ action. To us, the issue of whether the Management Corporation of The Summit can impose multiple rates or otherwise should be determined by cross-examination of all the deponents of the affidavits filed by the party in the High Court. This right to do so is not only given to the appellant but also to the respondents. Hence there will no prejudice caused to any parties, including the respondents.

[44] Therefore, based on the above reasons stated by us, encl 6 is dismissed and we varied the decision of the High Court by our decision as reflected above. The learned High Court judge is to continue with the hearing of the originating summons and the parties are given liberty to cross-examine deponents.

[45] Costs in the cause.

Order accordingly.

Reported by Ashok Kumar